

Proposed Guidelines, Approved December 1, 2011

**PROPOSED
GUIDELINES FOR THE OPERATIONS OF
THE OFFICES OF THE PUBLIC
ADMINISTRATORS
OF NEW YORK STATE**

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GUIDELINES FOR THE OPERATIONS OF THE OFFICES OF THE PUBLIC
ADMINISTRATORS OF NEW YORK STATE

Pursuant to its authority under Section 1128 of the Surrogate's Court Procedure Act ("SCPA"), the Administrative Board for the Offices of the Public Administrators ("Administrative Board") hereby enacts guidelines for the operations of the Public Administrators ("PAs") governed by Article 11 and Article 12 of the SCPA.

As used in these guidelines, the term PA shall refer to a Public Administrator within the City of New York, and of the counties of Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester, and shall include a Deputy Public Administrator authorized by statute or the court to perform duties belonging to the office of the Public Administrator. The word "estate" shall include guardianship and trust accounts handled by the PA.

A "party related to the PA," as used in these Guidelines, shall be (a) any individual related by blood or marriage within the fourth degree, to the PA, or (b) any employee of the PA's office, or (c) any corporation, firm, association or other entity in which one or more of its officers or directors or any person having a substantial financial interest is related by blood or marriage within the fourth degree to the PA or any employee of the PA's office. For purposes of this section, counsel to the PA and counsel's staff shall be regarded as employees of the PA's office.

As the offices covered by these guidelines are vastly different in size, population, and resources, in promulgating these guidelines the Administrative Board has sought to balance the benefits of uniformity with the need for flexibility. The PAs are reminded that as fiduciaries appointed by the court they should, in the absence of explicit direction in these guidelines, be guided by established principles of fiduciary accountability, statutory authority, and/or direction by the court. In discharging the duties of office, the PA should at all times strive to avoid taking action that may give rise to a conflict of interest or the appearance of impropriety.

I. Office Procedures and Record Keeping

A. Internal Controls

Each PA shall promulgate a written plan ensuring a segregation of duties for collection and custody of estate assets, authorizations for handling estate transactions, record-keeping, and the

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reconciliation of estate accounts. Where the resources of the office do not permit complete segregation of duties, the PA shall promulgate a written plan establishing those internal controls which are feasible.

B. Case Management System

1. Each PA shall implement and maintain an electronic case management system containing a record of each estate under administration. Such records shall be maintained after administration is complete in accordance with all state, local, and/or administrative requirements regarding records retention.

2. All estate activity shall be recorded promptly in the case management system. The case management system shall provide:

(a) a tracking and recording system which shall include a calendar or report-generating function that reflects the status of each estate, so that the PA may monitor unusual delays in the administration of any estate;

(b) an individual inventory of each item of real and personal property of saleable value relating to each estate, and the location of such assets; and

(c) an accounting system to record and summarize all receipts and disbursements for each estate. The entries in this accounting system shall reflect the estate to which they pertain, the date of receipt and the source of funds received, the date and nature of each disbursement and reference to invoices or other documentation supporting the disbursement, and any other relevant information.

3. The electronic case management system shall include appropriate security features including controlled access to the system and data backup.

C. Maintenance of Estate Documents

The PA shall maintain a file [“the estate file”] for each estate containing all documents relating thereto, including but not limited to pleadings, tax returns, correspondence, financial statements, investigator’s reports, police vouchers, appraisals, insurance documents, receipts, invoices, and proof of payment of estate disbursements. The estate file shall be maintained after administration is complete in accordance with all state, local, and/or administrative requirements

regarding records retention. Electronic storage of all or some of the documents in the estate file is permissible.

D. Maintenance of Suspense Accounts

1. The PA may maintain an account ("suspense account") containing (a) fees allowed by the court pursuant to SCPA 1106(3) or SCPA1207(4), (b) interest earned on monies in the account, (c) funds representing reimbursement of disbursements for particular estates made from the suspense account prior to the collection of estate assets, and (d) fees received by the PA for the performance of administrative services pursuant to Section II(E) of these Guidelines. Suspense account monies may not be commingled with estate funds.

2. The PA may use the suspense account to pay office expenses not funded by the PA's budget, as set forth herein. Expenses funded from the suspense account must be necessary for the proper functioning of the office's operations and for the administration of estates. Where suspense account funds are used to purchase office equipment or supplies, the PA shall maintain records which set forth the date, nature, and amount of the expenditure. Where suspense account funds are used to pay salaries and benefits for office personnel, the PA shall maintain records which set forth the reasons for employing such personnel and justify the reasonableness of their salaries and benefits.

3. The suspense account may be used to pay disbursements such as filing fees or fees for death certificates for the individual estates prior to the collection of estate assets. The suspense account shall be reimbursed promptly after estate assets are collected. Suspense account funds may be used to pay miscellaneous estate disbursements including those related to real estate where estate assets are insufficient to pay such expenses.

4. The PA shall keep and maintain accurate records of all receipts and disbursements to and from the suspense account, including back up documentation. All suspense account disbursements shall be approved in writing by the PA, and shall be supported by invoices setting forth the date, nature, and amount of such disbursement. Monthly reports of such receipts and disbursements and of the present balance of the suspense account shall be maintained and shall be provided upon request to the Surrogate, the Attorney General, the State Comptroller and, with respect to the offices of the PAs within the City of New York, the Comptroller of the City of New York.

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5. PAs within the City of New York seeking approval of an increase in the suspense fee pursuant to SCPA 1106(3) shall include with their written request to the Administrative Board copies of the monthly reports for two years preceding the date of the request.

E. Annual Audit

The annual audit of the offices of the PA's office by an independent auditing firm, pursuant to SCPA §1109 (PAs within the City of New York) or SCPA §1208 (PAs in Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester Counties) shall be conducted in compliance with generally accepted government audit standards, and shall:

1. review a random sample of cases handled by the PA, which shall include proportionate representation of the population of formal and small estates as well as any guardianship or trust accounts handled by the PA, for compliance with these Guidelines;

2. review and test any procedures that the PA is directed to promulgate by these Guidelines;

3. review the integrity and efficacy of any specialized fiduciary financial management software system used by the PA to manage a "pooled" account maintained at a financial institution pursuant to Section III(A)(1) of these Guidelines;

4. include, where applicable, recommendations for improvement and corrective action; and

5. attest to the validity of the total value of the estate accounts as reported on the PA's last report filed with the Office of the New York State Comptroller pursuant to 2 NYCRR 72.1 (PA's within New York City), or 2 NYCRR 71.1 (PA's in Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester).

II. Administrative Functions

A. Conducting Due Diligence

When the PA is notified of the death of a decedent, the PA shall promptly investigate whether it may be appropriate for the PA to petition for appointment as the estate fiduciary. In conducting this investigation, the PA shall comply with the Uniform Rules of the Surrogate's Court and all local rules and practices with respect to searching for the decedent's distributees.

B. Settlement of Estate Accounts

The PA shall judicially settle all accounts whenever the gross assets of the decedent's estate exceeds the monetary amount defined for a small estate pursuant to subdivision 1 of SCPA 1301, unless otherwise directed by the court.

C. Administration of Small Estates Pursuant to SCPA 1115 (1)

Upon filing the informational account for small estates pursuant to SCPA 1115(1), the PAs governed by Article 11 of SCPA may disburse to counsel a sum not in excess of 6% of the gross estate to pay counsel for legal services rendered in connection with the administration of the estate.

D. Requesting and Disbursing Counsel Fees in Formal Estates

1. In the absence of special circumstances, the PAs governed by Article 11 of the SCPA shall require their counsel to limit their request for compensation in any estate to an amount not to exceed a maximum fee, based on the gross value of the estate ("total charges" reported in the account), as set forth below:

Gross Value	Percentage
First \$750,000	6
Next \$500,000	5.5
Next \$250,000	5
Next \$500,000	4.5
Next \$3,000,000	3
Over \$5,000,000	1.5

2. In the absence of special circumstances, the PAs governed by Article 11 of the SCPA shall require that where the PA is appointed to prosecute a wrongful death or personal injury action on behalf of a decedent's estate, the combined fee of tort counsel retained to prosecute the tort action and the fee of counsel to the PA for legal services rendered for estate administration shall

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not exceed the customary fee allowed in the PA's county for tort cases in which the PA is not the fiduciary. The PA shall require that the fee requested by their estate administration counsel shall not exceed the percentages in the above schedule based on the net value of the estate after deducting tort counsel's fees and disbursements.

3. The above provisions shall not in any way infringe on either the rights of interested parties to object to counsel fees or on the jurisdiction of the court to determine such fees, nor shall they apply to any PA governed by Article 12 of the SCPA unless so ordered or permitted by the Surrogate of the PA's county.

4. Counsel for the PAs governed by both Article 11 and Article 12 of the SCPA shall be required to maintain in their files contemporaneous time records for all legal services rendered, and to support their request for compensation with an affidavit of legal services that complies with the requirements of SCPA 1108[2][c] or Uniform Rule 207.45, as applicable, and any additional requirements as directed by the Surrogate of the PA's county. Such time records shall be provided upon request to any party to the proceeding.

5. In the absence of a court order:

(a) the PA shall not disburse to counsel on account of legal fees an amount that exceeds 50% of the amount calculated pursuant to the schedule set forth in paragraph 1 of this section; and

(b) no payment on account of legal fees shall be made by the PA until counsel has filed with the PA an affidavit of legal services and an affirmation that jurisdiction is complete in the proceeding for judicial settlement of the PA's account.

6. Paragraph 5 of this section shall apply to disbursements by the PAs governed by both Article 11 and Article 12 of the SCPA, even in counties where counsel's total compensation is not computed pursuant to the schedule set forth in paragraph 1, but Paragraph 5 shall in no way authorize the PA to disburse counsel fees in the absence of a court order where that practice is prohibited by the court.

E. Services on behalf of Estates for which no Commissions are Awarded

Where the PA or the PA's staff performs substantial administrative services on behalf of

an estate, for which the office is not awarded commissions as a permanent fiduciary, the PA may assert a claim against the estate in *quantum meruit* for the administrative services rendered, and, in the absence of extraordinary circumstances, the claim shall be limited to one percent of the gross value of the estate.

III. Cash Management

A. Estate Accounts

1. Upon receipt by the PA of any funds from any source for a decedent, the PA shall open at a financial institution a separate interest-bearing account in the name of decedent's estate ["the estate account"]. The deposit of estate funds into a "pooled" account shall be prohibited, except for the deposit of funds into an interest bearing sub account where (a) the PA maintains at a financial institution a master account for making disbursements, and interest bearing sub accounts for each estate; or (b) the PA maintains a "pooled" account at a financial institution and employs a specialized fiduciary financial management software system to record and maintain separate sub account ledgers for each estate. Such software system shall contain appropriate security features including controlled access to the system and data backup, and shall incorporate a system of checks and balances to ensure that estate funds are appropriately credited, debited, and reported.

2. The PA shall without undue delay liquidate accounts held solely in the name of the decedent, and shall deposit all funds received into the estate account or sub account.

3. Interest shall be posted to each estate account or sub account no less than monthly, within a reasonable time after the end of the applicable month.

4. Each estate account or sub account shall be reconciled no less than monthly with the balance maintained by the financial institution.

5. Estate funds held in FDIC-insured accounts shall not exceed the amount insured by the FDIC ("FDIC insured amount"). If funds held for an estate in a particular financial institution exceed the FDIC insured amount, the PA shall immediately: (a) open a separate account or accounts in a different financial institution or financial institutions so that no funds held for an estate in a particular financial institution exceed the FDIC insured amount; or (b) collateralize such sums with approved government securities, pursuant to a written security agreement between the PA and the financial institution. Funds held in non-FDIC insured accounts must be secured by collateral, as

above.

6. The PA shall promulgate written procedures to ensure compliance with the requirements of this section.

B. Estate Disbursements

All disbursements of estate funds shall be approved in writing by the PA, and shall be supported by invoices reflecting the date, nature, and amount of each disbursement, and the estate against which each disbursement is charged. The PA shall maintain a record of such approval in the estate file.

C. Assets Not Passing Through the Estate

1. Whenever the PA receives evidence of joint or trust bank accounts, insurance policies, retirement accounts or other similar assets not passing through the estate, the PA shall promptly notify the institution holding such assets of the death of the decedent, and shall seek to obtain the date of death value of the assets and any available information concerning the joint owner or designated beneficiary, which shall be maintained in the estate file. The PA shall include the information obtained concerning joint and beneficiary assets statement of other pertinent facts in Schedule J of the judicial accounting. After considering the solvency of the decedent's estate, any estate tax issues, potential issues as to validity and liability, and all other relevant information, the PA shall utilize the available information to inform joint owners and designated beneficiaries as to the existence of such assets, if the PA believes that to do so is consistent with the best interests of decedent's estate and the PA's fiduciary obligations thereto.

2. PA's counsel shall not solicit or enter into retainer agreements with the beneficiaries of assets not passing through the estate, nor shall PA's counsel seek compensation from the beneficiaries of such assets for services performed in connection with the collection or liquidation of such assets, except where such services are performed to facilitate a necessary payment of funds to the PA as fiduciary of the decedent's estate from such assets.

IV. Property Management

A. Property Search and Collection

1. The PA shall take all steps necessary to assure that all personal property belonging to

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a decedent's estate is collected and credited to the decedent's estate. It is the duty of the PA to supervise and oversee the conduct of those who search and collect personal property.

2. The search of a decedent's residence, if feasible, shall be conducted as soon as possible after notice of the decedent's death is received and the PA determines that such search is appropriate.

3. During all searches for personal property at the residence of a decedent, at least two employees employed by the PA's office shall be present at all times. Where the size and budget of the PA's office precludes the dispatch of two employees to search the decedent's residence, at least one employee of the PA's office, or the PA, must be present at all times. Prior to the search, the employee(s) shall endeavor to secure at the search the presence of an independent witness, such as a landlord or building superintendent, at the search. The employee(s) shall, to the extent feasible, thoroughly search each residence and document the contents and condition of the residence by photograph or video recording, which documentation shall be reviewed by the PA and maintained by the PA in the estate file. The employee(s) shall contemporaneous with the search of the residence or immediately thereafter, make a complete and detailed report of the search and, to the extent feasible, an inventory of its contents. The report and inventory shall be signed by the employee(s) and any other witness to the search. If no independent witness is available, or if the witness(es) refuse(s) to sign the report and inventory, the PA's employee(s) shall document such in the report.

4. The person(s) authorized to conduct the search of a decedent's residence shall remove cash and easily transportable valuables from the residence to a secure location as soon as feasible. The PA shall establish and maintain written procedures to ensure the secure transportation and storage of cash and valuables removed from the decedent's residence.

5. After the initial search of a decedent's residence, the PA shall evaluate relevant information including the inventories, documentation, and employees' reports to determine if any further action concerning the residence is required. Further action may include an additional search, procuring insurance, appraisal of real or personal property, the release of the premises to the landlord, sale of the residence's contents by public auction, sealed bid, or household sale, or directing that the contents of the residence be brought to the PA's warehouse, safe, or elsewhere for later sale.

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6. After the PA's employees have searched the residence, its entrance and windows are to be sealed or otherwise secured, unless the premises are released to the landlord. If the premises are released to the landlord or the landlord's agent, the employees shall secure a signed receipt or release from the landlord or its agent.

7. The PA shall maintain a log reflecting every visit to the decedent's residence, the individuals who entered the residence and the reason for the entry. The PA shall maintain keys to decedents' residences in a secure place and control access to such keys.

8. Where the PA is required to open a safe deposit box maintained by the decedent, at least two employees employed by the PA's office shall be present at all times. Where the size and budget of the PA's office precludes the hiring of two employees, at least one employee of the PA's office, or the PA, must be present at all times. Prior to the search, the employee(s) shall endeavor to secure at the search the presence of an independent witness, such as a bank employee. The employee(s) shall, to the extent feasible, document the contents of the safe deposit box by photograph or video recording, and such documentation shall be reviewed by the PA and maintained by the PA in the estate file. The employee(s) shall contemporaneous with the search or immediately thereafter, make a complete and detailed report of the search, and to the extent feasible, an inventory of its contents. The report and inventory shall be signed by the employee(s) and any independent witness. If no independent witness is available, or if the witness refuses to sign the report and inventory, the PA's employee(s) shall document such in the report. The PA shall establish and maintain written procedures to ensure the secure transportation and storage of cash and valuables removed from safe deposit boxes.

9. As soon as possible after notice of the decedent's death is received and it appears that it may be appropriate for the PA to petition for appointment as the estate fiduciary, the PA shall contact the appropriate police property clerk or precinct to determine whether the police department is holding any of decedent's property. If such property is in police custody, the PA shall promptly collect such property. Any members of the PA's staff who collect such property shall execute a written statement to be attached to the police inventory form attesting that the staff person has collected all of the property enumerated on the inventory.

B. Sale of Personal Property

1. Each PA shall maintain a roster of individuals and/or companies that have indicated an

interest in purchasing a decedent's personal property. The PA shall advertise the opportunity to bid at such sales and invite individuals and/or companies to be listed on this roster by posting a permanent announcement on the PA's website, or on a website maintained by the PA's county, or on a website maintained by the City of New York, as applicable. In the alternative, the PA shall, on an annual basis, advertise in a paper of general circulation in the PA's county the opportunity to bid at such sales and invite individuals and/or companies to be listed on their roster. All those listed on the roster shall be notified of all sales held by the PA no less than five (5) business days prior to such sale. If the PA becomes aware that a decedent's friends, family members, or alleged family members have an interest in purchasing property from a particular decedent's estate, the PA shall notify them of the sale and also accept bids from them as well.

2. The PA shall sell any item of a decedent's personal property at public auction unless specific factors make sale at public auction impractical. The PA shall be responsible for selecting the property to be auctioned and may not leave this decision to the discretion of the auctioneer. The PA shall supervise all aspects of auction sales of estate property and should require that the auctioneer or someone acting on his behalf reconcile items sold or left unsold at auction to estate property inventory records to ensure that all the items are accounted for. The PA shall maintain in the estate file a summary of the results of the auction. For each auctioned item, the PA shall indicate the sale price, the item sold, the name and address of the purchaser, and the estate to which the sale price should be credited.

3. Where the PA reasonably believes that sale at public auction is not in the best interest of the estate, the PA may dispose of a decedent's personal property by sealed bid auction or household sale. Where the personal property consists of furnishings or fixtures of less than significant value, or where specific factors make sale by other means impractical, such property may be sold in conjunction with the sale of the real property. Personal property that has no value may be disposed of at the PA's discretion.

4. Each time the PA disposes of estate property by sealed bid auction, the PA shall offer the property to at least three purchasers from the roster on a rotating basis. At least three sealed bids are to be solicited for each sale. The highest bid shall be selected. The PA shall ensure that information regarding the bid amounts and the identity of bidders is not disclosed during the bidding process. A copy of each bid shall be retained in the estate file.

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5. All payments by purchasers of personal property shall be promptly deposited in the estate account.

6. In no event may the individual or companies bidding on or purchasing personal property be parties related to the PA as defined herein. The PA shall devise and implement procedures to ensure compliance with this section.

7. The use of third parties to conduct the auction or household sale of personal property is permissible, and the PA shall select and compensate such third-parties in the manner prescribed below for the selection and compensation of vendors.

C. Sale of Real Property and Cooperative Apartments

1. Each PA shall maintain a roster of individuals and/or companies that have indicated an interest in purchasing a decedent's real property. The PA shall advertise the opportunity to be included in this roster in the manner prescribed for personal property in Section III(B)(1).

2. With respect to real property of decedents other than condominium apartments located within New York, Kings, Queens, or Bronx Counties, the PAs of those counties shall have such real property appraised and sold at public auction. Broad advance notice of each public auction shall be given, inviting attendance at the auction and/or bids on real property available for purchase. No real estate brokerage fees in excess of three (3%) percent of the price for which the property is purchased shall be paid to any real estate broker in connection with auction sales. If the PAs of those counties are unable to sell such real property at a public auction, such property may be sold by private sale at the highest and best price available. Reasonable real estate brokerage fees may be paid in connection with such sales. At any time that the PA reasonably believes that an auction sale of a particular parcel of real property is not in the best interest of the estate, the PA may seek court permission to dispose of the property by private sale.

3. With respect to cooperative and condominium apartments of decedents which are located within New York, Kings, Queens, or Bronx Counties, the PAs within those counties shall determine the fair market value and sell cooperative and condominium apartments either by public auction, as set forth in paragraph 2 of this section, or by private sale at the highest and best price available. Reasonable real estate brokerage fees may be paid in connection with private sales.

4. With respect to real property or cooperative apartments of decedents which are located

in counties other than those enumerated above, the PA shall determine the fair market value and sell this property at public auction or by private sale at the highest and best price available. Where the real property is sold at public auction, broad advance notice of each public auction shall be given, inviting attendance at the auction and/or bids on real property available for purchase. No real estate brokerage fees in excess of three (3%) percent of the price for which the property is purchased shall be paid to any real estate broker in connection with auction sales. Reasonable real estate brokerage fees may be paid in connection with private sales.

5. In no event may the individual or companies bidding on or purchasing real property or cooperative apartments be related to the PA as defined herein. The PA shall devise and implement procedures to ensure compliance with this section.

V. Compensation and Selection of Outside Vendors

A. Selection of Outside Vendors

1. As referred to herein, "outside vendors" shall be defined to include, without limitation: real estate appraisers, accountants, private investigators, real estate brokers, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, genealogists, kinship investigators, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians, locksmiths, carpenters), and investment advisors. Except as otherwise provided herein, whenever the PA determines that the services of an outside vendor are necessary to properly administer an estate, the PA may employ an outside vendor, following the procedures set forth herein.

2. Except for filing due diligence to obtain jurisdiction in a proceeding, a PA shall not hire a genealogist or kinship investigator without court approval. Such hiring, including compensation, shall be made on the terms and conditions set by the court. Any retention of a genealogist or kinship investigator shall be conditioned upon agreement that such genealogist or kinship investigator shall not (a) represent any distributee discovered, (b) accept any compensation from such distributee, nor (c) suggest or recommend to the distributee the services of any attorney or kinship investigator, other than to suggest that a distributee might wish to confer with an attorney of the distributee's own choosing.

3. The PA may not employ as an outside vendor any employee of the PA's office, or any

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individual related by blood or marriage to the PA, as defined herein. The PA shall establish and maintain written procedures to ensure compliance with this section. This section does not apply to permanent employees of the PA's office who receive compensation for services performed outside of normal working hours for showing real property prior to public auction.

4. The PA shall advertise for outside vendors by posting a standing announcement on the PA's website, or on a website maintained by the county where the PA maintains his or her office, or on a website maintained by the City of New York, as applicable, soliciting outside vendors to apply to provide services to the PA. In the alternative, the PA may, on an annual basis, advertise in a newspaper of general circulation within the PA's county. The announcement should detail the services sought, a description of the work involved, and the requirements for employment by the PA.

5. Based on responses to the advertisement and the PA's knowledge of competent outside vendors, the PA shall prepare a list of the providers in each category, specifying for each the provider's usual fee. The PA shall include on the list only those outside vendors that hold all necessary licenses for their field, have a good reputation in the community, and, if they have provided goods or services in the past, those who have performed the services competently or have provided goods of serviceable quality. The list shall be updated at least annually and shall be available for public inspection at the PA's office.

6. In selecting an outside vendor to provide services, the PA shall select one who is competitive with other vendors in the classification. In all events, the vendors chosen must have the complete confidence of the PA based upon their prior working relationship or general reputation and standing in the community.

B. Compensation of Outside Vendors

Compensation paid to outside vendors by the PA shall be supported by a written agreement or invoice that sets forth a description of the work done or services performed, and shall be fair and reasonable considering the circumstances of each individual county.

VI. Effective Date

These Guidelines shall be effective _____ .